IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2006

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

W.P.No.6560 of 2000

M/s.Vicnivas Agency
rep. By its Managing Partner
Mr.Pon Kumar. ... Petitioner

Versus

1. The State of Tamil Nadu
rep. By its Secretary to Government
Department of Commerce and Industries
Fort St. George
Chennai 9.

2. The Industries Commissioner and
Director of Industries and Commerce
Chepauk, Chennai 5.

3. The General Manager
District Industries Centre
Near Bye Pass Road
Thoothukudi 620 101.

4. The Commercial Tax Officer II
Office of the Commercial Tax Officer
Beach Road,
Tuticorin. ... Respondents

Prayer: Writ Petition under Article 226 of the Constitution of India for the relief of issuance of writ of certiorarified mandamus.

For Petitioner : Mr.R.Subramanian
For Respondents : Mr.R.Thirugnanam, Spl.Govt. Pleader (R1 to R3)
Mr.A.Shanmugasundaram R4, G.A. [Govt. Advocate].

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

O R D E R

The above writ petition is filed for issuance of a writ of certiorarified mandamus to call for the records of the third respondent in his proceedings K.Dis.No.3645/A8/99 dated 9.8.1999, quash the same and direct the respondents to grant State Capital Subsidy and Sales Tax Waiver to the petitioner Company.

2. By his order dated 23.7.1999, the Industries Commissioner and Director of Industries and Commerce by referring the letter of the General Manager, District Industries Centre, Tuticorin dated 22.6.1999 informed him that the subsidy cannot be extended to an asset, which has been partly created by one entrepreneur and completed by the other one. Hence the claim of the petitioner was rejected. By the order dated 9.8.1999, the General Manager, District Industries Centre, Thoothukkudi by stating the reason as stated by the Industries Commissioner rejected the request of the petitioner for capital subsidy and the sales tax waiver.

3. The facts are as follows:-

The petitioner is a registered firm carrying on the business in the manufacture of Poly Propelene Woven Sacks. Plot No.C-78 of an extent of 2.01 acres in the Sipcot Industrial Complex, Tuticorin was originally allotted to M/s.Tuticorin Oxygen (Pvt) Limited. The said Company had put up a partially completed industrial shed in the land. It appears that the property has been re-possessed by the SIPCOT from M/s.Tuticorin Oxygen Pvt. Ltd., along with partially completed Industrial shed and it was allotted to the petitioner. As such the land and partially completed shed has been handed over to the petitioner on 14.6.1996. After allotment in favour of the petitioner, the petitioner put up building to the cost of Rs.10,29,600/- , purchased plant and machinery for the value of Rs.45,00,000/- apart from the other fixed assets in a sum of Rs.90,000/-. Thus, the petitioner has invested a sum of Rs.72,23,011/- and started the commercial production on 13.12.1996. Thereupon, the petitioner applied to the respondents for capital subsidy under G.O.Ms.No.500 dated 14.5.1990. That request has been rejected on the ground that the petitioner is not entitled to the subsidy as contemplated under the Government Order on the ground that the asset which has been partly created by one entrepreneur and completed by the other one cannot be regarded as an asset created by the petitioner so as to come within the purview of the Government Order.

4. Learned counsel appearing for the petitioner very strenuously contended that the order has to be quashed on the ground that none of the conditions stipulated in the Government Order disentitles the petitioner to avail the benefit of the Government Order in the facts and circumstances of the case. As a matter of fact, the petitioner has not directly purchased the partially put up construction from the person

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

concerned to whom the land was allotted by SIPCOT. But SIPCOT itself resumed the land along with the partially put up industrial shed and allotted the same to the petitioner on becoming a successful bidder . Hence, so far as the petitioner is concerned, the land as well as the partially completed industrial shed is a new asset and the building has been fully completed by the petitioner himself by putting up heavy investment as stated above in a sum of Rs.72,23,011/- and the industry is within the most backward area as required by the respondents and it has commenced commercial production within the time stipulated and as such the reason given by the Industries Commissioner cannot be legally sustainable.

5. On the other hand learned counsel appearing for the respondents argued to sustain the impugned order and further submitted that the petitioner is not entitled to the benefit of the G.O. not only for the reason that the petitioner has purchased partially completed construction and put up further construction for himself but also for the reason that the machineries installed by the petitioner are second hand machineries, which are not eligible for concession.

6. I heard the learned counsel on either side and perused the materials on record.

7. The conditions stipulated in the Government Order G.O.Ms.No.500 proceed as follows:

> " With a view to encourage more industries in Tamil Nadu, the Government direct that the following concessions also be made available to the industries:-
>
> (a) For the industries to be started in the 7th backward taluks, i.e. other than the 30 most backward taluks, from among the 105 backward taluks, and in the Industrial Estates developed by any of the Government agencies including Madras Export Porcessing Zone, Madras Metropolitan Development Authority, the scheme of Interest Free Sales Tax Loan / deferral ordered in the Government Order first, third and fourth read above is modified as follows:-
>
> (i) For the existing units undertaking expansion or diversification, deferral of sales tax will be given for nine years and the total amount thus given shall not exceed 80% of the additional investment made in fixed assets.
>
> (ii) For the new units, the total amount of deferral of sales tax will be given for nine years to the full extent of the total investment made in fixed assets.
>
> (b) The interest free Sales Tax deferral scheme is extended to the expansion (part -I) as well as to the stating of new industries (Part-II) in the other areas also, where this scheme was not in vogue hitherto. The deferral of

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

sales tax for the industries in these areas will be for five years subject to a maximum of 60% of the total investment made in fixed assets in the case of new industries and 50% of the additional investment in fixed assets made in the case of expansion/diversification of the existing industries.

(C) As a gesture to the industries to be set up in any part of Tamil Nadu with an investment in fixed assets of more than Rs.50 crores, a special incentive of deferral of sales tax for a period of 9 years to the extent of total investment made in fixed assets will be given. This deferral concession will also be available to the existing industries going in for expansion/diversification with an additional investment in fixed assets for more than Rs.50 crores.

5. The sales tax deferral/waiver of expansion/diversification ordered in paras 3-4 above is subject to the Sales Tax payable on products manufactured by the capacity created by expansion/diversification units only.

6. The industries in the Most Backward Taluks and in the SIPCOT complexes at Cuddalore, Manamadurai and Pudukkottai can opt either for the full waiver of Sales Tax for a period of five years ordered in para 3 above or for the deferral of sales tax for nine years as applicable to the industries in the Backward Taluks ordered in para 4(a) above. The option should be exercised along with the application to be submitted to the authority for issuing eligibiligy certificate. The option once exercised and accepted will be final and cannot be changed.

7. The application for Interest Free Sales Tax deferral should be filed before the General Manager, District Industries Centre concerned in the case of Small Scale Industries and before SIPCOT in the case of medium and major industries, before the commencement of commercial production.

8. The above scheme will be applicable to small, medium and major industries as the case may be. The deferral/waiver period will commence from the date of commencement of commercial production after the completion of the envisaged project. Such commencement shall be on or after the date of issue of this order, for eligible units.

9. The General Manager, District Industries Centre and SIPCOT will be the competent authorities to issue eligiblility certificates in respect to Small Scale Industries and major and medium industries respectively. The respective sales tax assessing authority will assets the sales tax liability of the units for each year. The sales tax authorities concerned based on the assessments, will

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

raise demands of sales tax without interest or waiver of sales tax after commencement of production by the units. But the tax payable for the year will be deferred/ waiver within the overall ceiling for which the eligibility certificate is issued by the authority. The deferred instalments shall be payable by the assessee units after the completion of the period of deferral together with the sales tax of the current year, without any interest thereon. In the case the unit avails the complete deferral/ waiver benefit before the completion of specified deferement period of 5 years or 9 years as the case may be the unit has to pay the normal Sales Tax immediately after the date of full availment of eligible deferral amount. The assessee of the unit for which the sales tax has been waived will start paying the current sales tax dues after the completion of the waiver period or immediately after the full availment of eligible waiver amount, whichever is earlier. However, the deferred amount of sales tax for 5 years or 9 years as the case may be, has to be paid after the completion of the deferral period along with the current dues i.e. in the case of deferral of 9 years the amount deferred in the first year being payable along with the sales tax due in the 10th year, the amount deferred in the second year being payable along with the Sales Tax dues in the 11th year and so on.

10. All eligible units which have commenced production before the date of issue of this order will be eligible for Interest Free Sales Tax Loan/deferral, as per the orders existing on the date of commencement of production. Units which have availed Interest Free Sales Tax Loan under existing schemes, may opt for the deferral facility to the extent of uncompleted period and unutilised amount of the earlier scheme.

11. The Original project in a taluk may go in for expansion/diversification in the same taluk where the original project is located or in any other taluk and avail the interest free sales tax deferral/waiver concession. However, this concession would be granted for one expansion/diversification only if carried out in the same taluk where the original project is located.

12. Second-hand machinery will not be part of the investment eligible for the computation of deferral or waiver of sales tax."`

8. The Government Order G.O.Ms.No. 500 has been the subject matter in several cases and one among them is SULOCHANA COTTON SPINNING MILLS (P) LTD., VS. STATE OF TAMIL NADU AND OTEHRS (98 S.T.C. 125) and the other unreported decisions of this Court in the case of THIRU AROORAN SUGARS LTD., VS. ASSISTANT COMMISSIONER, COMMERCIAL TAX, W.P.No.19395 of 1993 dated 7.8.1996 and STATE INDUSTRIES PROMOTION CORPORATION OF

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

TAMILNADU LTD VS. THIRU ARRORAN SUGARS LTD., W.A.No.78 of 1999 dated 19.12.2000, where the scope and amplitude of the G.O.Ms.No.500 and the requirements have been considered. In the unreported decision of this court in the case of STATE INDUSTRIES PROMOTION CORPORATION OF TAMILNADU LTD VS. THIRU ARRORAN SUGARS LTD.in W.A. 78 of 1999 it has been held as follows:-

> 30. A major change brought in by G.O.Ms.No. 500 was that out of 105 industrially backward taluks, it carved out 30 taluks as the "industrially most backward" taluks. In addition to it, it also provided that there would be a complete tax holiday for five years in the sense that the sales tax would be completely waived and such waiver would begin in case of the industries which would be set up in pursuance of G.O.Ms. No. 500. There does not seem to have been any variation in the earlier Government Policy to keep the conventional industries but of the benefit zone. However, the Government wanted to correct the industrial regional imbalance in the State and, therefore, wanted to give "further" incentives to attract more industries in the industrially most backward taluks and, therefore, in clause (3) of G.O.Ms.No. 500 a general term "new industries to be set up ' is used. Clause (3) of G.O.Ms.No. 500 reads as under :-
>
> "3. The Government direct that <u>the new industries to be set up</u> in the 30 most backward taluks ordered in para 2 above and also in the three industrial complexes of State Industries Promotion Corporation of Tamilnadu at Pudukkottai, Cuddalore and Manamadurai be eligible apart from other existing concessions, for full waiver of sales tax dues for a period of five years upto a ceiling of the total investment made in fixed assets. Existing industries in the most backward taluks and in the three State Industries Promotion Corporation of Tamil Nadu (SIPCOT) complexes, undertaking expansion/diversification are also eligible for full waiver of sales tax dues for a period of five years subject to a ceiling of the total investment made in fixed assets under expansion/diversification."
> Therefore, the intention of the Government was clear that it had decided to give the sales tax holiday for five years to "all the industries " which were "to be set up" in the 30 industrially most backward taluks in pursuance of this Government Order.
>
> 31. Clause (5) of the G.O.Ms.No.500 reads as under:
> "The sale tax deferral/waiver of expansion/diversification ordered in paras 3-4 above is subject to <u>the Sale Tax payable on products manufactured by the capacity created by expansion/diversification units only</u>" (emphasis supplied)

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

9. From the above, it is clear that the industry started by the petitioner is a new industry, which has commenced operation on 13.12.1996. For new industries, the only impediment in clause 12 of the G.O. is that the second hand machinery will not be part of the investment eligible for the computation of deferral or waiver of sales tax. The one and only reason stated by the respondents is that part of the asset has been created by the other entrepreneur. It is obvious that even though the asset was partly created, subsequently, it has been acquired and allotted to the petitioner for valuable consideration by the SIPCOT itself. Hence, from the point of view of the petitioner that asset can only be regarded as a new asset which has been acquired by the petitioner for the purpose of putting up industry in the most backward area. Hence, I am of the view that the reason stated by the Industries Commissioner, which has been reproduced by General Manager, District Industries Centre to non-suit petitioner cannot be regarded as a reason and it cannot be legally sustainable in law and as such the reasoning stated in the impugned order is extraneous to the G.O with which reliance has been placed. For the foregoing reasons, the impugned order is set aside and the matter is remitted back to the respondent authorities to reconsider the issue and pass appropriate orders in accordance with law, having regard to the requirements as enunciated in G.O.Ms.No.500 dated 14.5.1990, which has been considered in various judgments including the judgment in SULOCHANA COTTON SPINNING MILLS (P) LTD., VS. STATE AOF TAMIL NADU AND OTHERS (98 STC 125).

10. With these observations, the writ petition is disposed of . No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

krr/

To
1. The Secretary to Government
Department of Commerce and Industries
Fort St. George
Chennai 9.

2. The Industries Commissioner and
Director of Industries and Commerce
Chepauk, Chennai 5.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

3. The General Manager
District Industries Centre
Near Bye Pass Road
Thoothukudi 620 101.

4. The Commercial Tax Officer II
Office of the Commercial Tax Officer
Beach Road,
Tuticorin.

+ 1 CC To Mr.R.Subramanian, Advocate SR NO. 63739

+ 1 CC to the Government Pleader SR NO 63751

+ 1 CC to the Spl. Government Pleader SR NO 63612

W.P.No.6560 of 2000

Mdr[co]
Gp/4.1

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/